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**State Bar Court of California  
Hearing Department  
Los Angeles  
ACTUAL SUSPENSION**

<p>Counsel For The State Bar</p> <p>Erin McKeown Joyce Deputy Trial Counsel State Bar of California 1149 South Hill Street Los Angeles, CA 90015-2299 Telephone: (213) 765-1356 Facsimile: (213) 765-1319</p> <p>Bar # 149946</p>	<p>Case Number(s):</p> <p>10-O-07614 10-O-09124 10-O-11078 11-O-10114 11-O-10484 11-O-10489 11-O-10813 11-O-11148 11-O-11349 11-O-11987 11-O-12001 11-O-12006 11-O-14806 11-O-14811 11-O-15696 11-O-16088</p>	<p>For Court use only</p> <p align="center"><b>FILED</b> OCT 27 2011 <i>Mc</i> STATE BAR COURT CLERK'S OFFICE LOS ANGELES</p> <p align="center"><b>PUBLIC MATTER</b></p>
<p>In Pro Per Respondent</p> <p>J. Randy Dorcy P. O. Box 2349 Costa Mesa, CA 92628 (714) 560-3232</p> <p>Bar # 170620</p>	<p>Submitted to: <b>Settlement Judge</b></p> <p>STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING</p> <p><b>ACTUAL SUSPENSION</b></p> <p><input type="checkbox"/> PREVIOUS STIPULATION REJECTED</p>	
<p>In the Matter of: J. RANDY DORCY</p> <p>Bar # 170620</p> <p>A Member of the State Bar of California (Respondent)</p>		

**Note:** All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

**A. Parties' Acknowledgments:**

- (1) Respondent is a member of the State Bar of California, admitted June 6, 1994.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 18 pages, not including the order.



- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".
- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- ☐ Until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 5.130, Rules of Procedure.
  - ☒ Costs are to be paid in equal amounts prior to February 1 for the following membership years: commencing in 2013 to be paid in equal installments over three years. Respondent requires additional time to pay for the costs of these disciplinary proceedings due to his commitment to pay substantial restitution during his probation period. (Hardship, special circumstances or other good cause per rule 5.132, Rules of Procedure.) If Respondent fails to pay any installment as described above, or as may be modified by the State Bar Court, the remaining balance is due and payable immediately.
  - ☐ Costs are waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs".
  - ☐ Costs are entirely waived.

**B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.**

- (1) ☒ **Prior record of discipline** [see standard 1.2(f)]
- (a) ☒ State Bar Court case # of prior case 09-O-13560 and 11-O-11702
  - (b) ☒ Date prior discipline effective Discipline is not yet effective, since Supreme Court order has not issued.
  - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: Rule of Professional Conduct 3-110(A)
  - (d) ☒ Degree of prior discipline thirty day actual suspension, one year probation
  - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) ☐ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.

- (4) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.
- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) ☐ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct.
- (8) ☐ **No aggravating circumstances** are involved.

**Additional aggravating circumstances:**

**C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.**

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☒ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings. Throughout this proceeding, Respondent cooperated fully with the State Bar, answered the questions that were posed by the State Bar, and entered into this comprehensive stipulation acknowledging his misconduct and settling this case pre-filing.
- (4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ **Restitution:** Respondent paid \$            on            in restitution to            without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted in good faith.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) ☒ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct. The lengthy recession which began in 2008

severely impacted Respondent's practice. His income dropped precipitously in 2008 and 2009. It has continued to drop due to the bleak financial situation. Many long time clients have gone out of business since 2008, leaving large accounts receivable which are uncollectable.

- (10) ☒ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature. Respondent's long term marriage began to disintegrate in 2004, culminating in his wife filing for divorce in 2009. Respondent was forced to move out of the family home and spent at least four months living in his office. He has lived off and on with extended family and friends since the breakup of his marriage. He is currently embroiled in custody and visitation litigation, which is impacting his three children. His oldest daughter is a special needs child, diagnosed with Asperger's Syndrome, a form of autism. His income and business have been severely affected by the recession.
- (11) ☐ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct.
- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

**Additional mitigating circumstances:**

Respondent was admitted in 1994, and had no record of discipline for the first 11 years of his practice.

**D. Discipline:**

- (1) ☒ **Stayed Suspension:**
- (a) ☒ Respondent must be suspended from the practice of law for a period of three (3) years.
- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☐ and until Respondent does the following:
- (b) ☒ The above-referenced suspension is stayed.
- (2) ☒ **Probation:**
- Respondent must be placed on probation for a period of four (4) years, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)
- (3) ☒ **Actual Suspension:**
- (a) ☒ Respondent must be actually suspended from the practice of law in the State of California for a period of five (5) months. This five (5) month actual suspension is to run concurrently with the 30 day actual suspension imposed in Case No. 09-O-13560.

- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☐ and until Respondent does the following:

### E. Additional Conditions of Probation:

- (1) ☐ If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in the general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.
- (2) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) ☒ Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) ☐ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.

☒ No Ethics School recommended. Reason: Respondent is required to attend Ethics School in case no. 09-O-13560.

(9) ☐ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.

(10) ☐ The following conditions are attached hereto and incorporated:

☐ Substance Abuse Conditions

☐ Law Office Management Conditions

☐ Medical Conditions

☐ Financial Conditions

#### F. Other Conditions Negotiated by the Parties:

(1) ☐ **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 5.162(A) & (E), Rules of Procedure.**

☒ No MPRE recommended. Reason: Respondent is required to pass the MPRE in case no. 09-O-13560.

(2) ☒ **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.

(3) ☐ **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.

(4) ☐ **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:

(5) ☐ **Other Conditions:**

The probation in this matter is to run concurrently with the probation in Case No. 09-O-13560.

The Attachment to the Stipulation re Facts, Conclusions of Law and Disposition comprises pages 7 to 17.

**ATTACHMENT TO**  
**STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION**

**In the Matter of J. Randy Dorcy**

**Case Nos.**            10-O-07614, 10-O-09124, 10-O-11078, 11-O-10114, 11-O-10484,  
                             11-O-10489, 11-O-10813, 11-O-11148, 11-O-11349, 11-O-11987  
                             11-O-12001, 11-O-12006, 11-O-14806, 11-O-14811, 11-O-15696  
                             11-O-16088

**PENDING PROCEEDINGS:**

The disclosure date referred to on page two, paragraph A.(7), was October 19, 2011.

Respondent admits that the following facts are true and that he is culpable of violations of the specified Rules of Professional Conduct and Business and Professions Code sections.

**GENERAL BACKGROUND**

In 2008, Respondent began to undertake loan modification work in his office in addition to the other matters in his office. He offered a money back guarantee if he was unsuccessful in negotiating a loan modification on behalf of his clients.

In all the matters detailed below, except as otherwise noted where the client immediately terminated the attorney and requested a refund, Respondent performed substantial legal services related to the clients' loan modification matters. But for the money back guarantee language in his attorney-client agreements, Respondent would not be required to refund fees in these matters.

However, since he was unsuccessful in the identified client matters in negotiating a loan modification due to no fault of the clients, Respondent was required to promptly refund unearned fees at the conclusion of his representation, since the fees were contingent on Respondent successfully obtaining the loan modification for the clients.

**Case No. 10-O-7614**

**FACTS**

1. On November 2, 2009, Kevin and Jeana Wells hired Respondent for a loan modification and paid \$3,000.
2. Respondent secured a trial modification for the Wells for a payment of approximately \$1,800 per month, down from the then current payment of \$2,342.27 per month.
3. The Wells rejected the trial modification since they could only afford payments of \$1,200 per month in their estimation.

## **CONCLUSIONS OF LAW**

By collecting an advanced fee to perform mortgage loan modification services on behalf of the Wells, after the effective date of Civil Code section 2944.7, Respondent willfully violated Business and Professions Code section 6106.3.

### **Case No. 10-O-9124**

## **FACTS**

1. On December 21, 2009, Maureen Mutschuler hired Respondent for a loan modification and paid \$3,500.
2. Respondent provided a money back guarantee if his efforts to secure a loan modification proved unsuccessful.
3. Respondent was unsuccessful in obtaining a loan modification on behalf of Mutschuler.
4. To date, Respondent has failed to refund the \$3,500 unearned advanced fees to Mutschuler.

## **CONCLUSIONS OF LAW**

By collecting an advanced fee to perform mortgage loan modification services on behalf of Mutschuler, after the effective date of Civil Code section 2944.7, Respondent willfully violated Business and Professions Code section 6106.3.

By failing to refund the \$3,500 advanced fees to Mutschuler, Respondent failed to promptly refund any part of a fee paid in advance that has not been earned in wilful violation of Rule of Professional Conduct 3-700(D)(2).

### **Case No. 11-O-10114**

## **FACTS**

1. On November 11, 2009, Nicole Das hired Respondent for a loan modification and paid \$3,500.
2. Respondent obtained a forbearance on behalf of Das, which was offered by the lender as a trial period before the final loan modification was approved.
3. Das contacted Respondent and requested a full refund.
4. Respondent did not provide a refund to Das.
5. Das filed a small claims case against Respondent and received a judgment for unearned advanced fees in the amount of \$3,500 against Respondent.



6. Respondent has failed to pay Das the \$3,500 advanced fees to date despite the judgment for \$3,500 against him.

### **CONCLUSIONS OF LAW**

By collecting an advanced fee to perform mortgage loan modification services on behalf of Das, after the effective date of Civil Code section 2944.7, Respondent willfully violated Business and Professions Code section 6106.3.

By failing to refund the \$3,500 advanced fees to Das, Respondent failed to promptly refund any part of a fee paid in advance that has not been earned in wilful violation of Rule of Professional Conduct 3-700(D)(2).

### **Case No. 11-O-10484**

### **FACTS**

1. On November 24, 2009, Nihada Ademovic hired Respondent for a loan modification and paid \$3,500.

2. Ademovic failed to disclose her 401(k) as an asset in the initial Intake documents and on her financial documents submitted to the lender with the loan modification package.

3. Respondent filed a request for a loan modification on behalf of Ademovic and performed substantial services.

4. Ademovic's request for a loan modification was declined by the lender because of her 401(k) account.

### **CONCLUSIONS OF LAW**

By collecting an advanced fee to perform mortgage loan modification services on behalf of Ademovic, after the effective date of Civil Code section 2944.7, Respondent willfully violated Business and Professions Code section 6106.3.

### **Case No. 11-O-10489**

### **FACTS**

1. On April 28, 2010, Eduardo Ortiz hired Respondent for a loan modification and paid \$3,500.

2. Respondent filed a request for a loan modification on behalf of Ortiz and performed substantial services.

3. Ortiz failed to provide all documents requested by the lender and by Respondent to complete the loan modification process.

4. Ortiz's request for a loan modification was declined by the lender because of Ortiz's failure to provide all required documents to the lender by the lender's deadline.

## **CONCLUSIONS OF LAW**

By collecting an advanced fee to perform mortgage loan modification services on behalf of Ortiz, after the effective date of Civil Code section 2944.7, Respondent willfully violated Business and Professions Code section 6106.3.

### **Case No. 11-O-10813**

## **FACTS**

1. On December 2, 2009, Rosa Vargas hired Respondent for a loan modification and paid \$3,500.
2. Respondent filed a request for a loan modification on behalf of Vargas and performed substantial services.
3. Respondent obtained a trial loan modification for Vargas, but she rejected the offer since she did not have sufficient income to support even the lowered monthly payments required by the trial loan modification.

## **CONCLUSIONS OF LAW**

By collecting an advanced fee to perform mortgage loan modification services on behalf of Vargas, after the effective date of Civil Code section 2944.7, Respondent willfully violated Business and Professions Code section 6106.3.

### **Case No. 11-O-11078**

## **FACTS**

1. On January 8, 2010, Luis Torres hired Respondent for a loan modification and paid \$1,200 of the \$3,500 fee for the loan modification.
2. Torres did not make any additional payments to Respondent. Instead he terminated Respondent and requested a refund.
3. Respondent did not provide any legal services of value to Torres.
4. To date, Respondent has failed to refund the \$1,200 unearned advanced fees to Torres.

## **CONCLUSIONS OF LAW**

By collecting an advanced fee to perform mortgage loan modification services on behalf of Torres, after the effective date of Civil Code section 2944.7, Respondent willfully violated Business and Professions Code section 6106.3.

By failing to refund the \$1,200 advanced fees to Torres, Respondent failed to promptly refund any part of a fee paid in advance that has not been earned in wilful violation of Rule of Professional Conduct 3-700(D)(2).

**Case No. 11-O-11148**

**FACTS**

1. On May 18, 2010, Donald Hoover hired Respondent for a loan modification and paid \$3,500.
2. Respondent filed a loan modification request on behalf of Hoover.
3. Respondent provided a money back guarantee if his efforts to secure a loan modification proved unsuccessful.
4. Respondent was unsuccessful in obtaining a loan modification on behalf of Hoover.
5. The loan modification was denied by the lender since the lender determined that Hoover maintained too much equity in the property.
6. Hoover contacted Respondent and requested a full refund.
7. Respondent did not provide a refund to Hoover.

**CONCLUSIONS OF LAW**

By collecting an advanced fee to perform mortgage loan modification services on behalf of Hoover, after the effective date of Civil Code section 2944.7, Respondent willfully violated Business and Professions Code section 6106.3.

By failing to refund the \$3,500 advanced fees to Hoover, Respondent failed to promptly refund any part of a fee paid in advance that has not been earned in wilful violation of Rule of Professional Conduct 3-700(D)(2).

**Case No. 11-O-11349**

**FACTS**

1. On March 17, 2010, Doneen Hoffman hired Respondent for a loan modification and paid \$3,500.
2. Respondent filed a loan modification request on behalf of Hoffman.
3. Hoffman filed a bankruptcy petition while the loan modification request was pending. The lender could not consider the request since the bankruptcy had not been discharged.

4. Respondent performed substantial legal services on behalf of Hoffman in connection with the loan modification.

### **CONCLUSIONS OF LAW**

By collecting an advanced fee to perform mortgage loan modification services on behalf of Hoffman, after the effective date of Civil Code section 2944.7, Respondent willfully violated Business and Professions Code section 6106.3.

#### **Case No. 11-O-11987**

### **FACTS**

1. On May 18, 2010, Alice White hired Respondent for a loan modification and paid \$3,495.
2. Respondent filed a loan modification application for White, which proved unsuccessful.
3. White contacted Respondent and requested a full refund.
4. Respondent did not provide a refund to White.
5. White filed a small claims case against Respondent and received a judgment for unearned advanced fees in the amount of \$3,495 against Respondent.
6. Respondent has failed to pay White the \$3,495 advanced fees to date despite the judgment for \$3,495 against him.

### **CONCLUSIONS OF LAW**

By collecting an advanced fee to perform mortgage loan modification services on behalf of White, after the effective date of Civil Code section 2944.7, Respondent willfully violated Business and Professions Code section 6106.3.

By failing to refund the \$3,495 advanced fees to White, Respondent failed to promptly refund any part of a fee paid in advance that has not been earned in wilful violation of Rule of Professional Conduct 3-700(D)(2).

#### **Case No. 11-O-12001**

### **FACTS**

1. On July 6, 2010, Iris Mohr hired Respondent for a loan modification and paid \$3,200.
2. Respondent provided a money back guarantee if his efforts to secure a loan modification proved unsuccessful.

3. Respondent filed a loan modification application for Mohr, which proved unsuccessful.

4. Mohr contacted Respondent and requested a full refund.

5. Respondent did not provide a refund to Mohr.

### **CONCLUSIONS OF LAW**

By collecting an advanced fee to perform mortgage loan modification services on behalf of Mohr, after the effective date of Civil Code section 2944.7, Respondent willfully violated Business and Professions Code section 6106.3.

By failing to refund the \$3,200 advanced fees to Mohr, Respondent failed to promptly refund any part of a fee paid in advance that has not been earned in wilful violation of Rule of Professional Conduct 3-700(D)(2).

### **Case No. 11-O-12006**

### **FACTS**

1. On October 14, 2009, Jack Readwine hired Respondent for a loan modification and paid \$2,995.

2. Respondent provided a money back guarantee if his efforts to secure a loan modification proved unsuccessful.

3. Respondent filed a loan modification application for Readwine, which proved unsuccessful.

4. Readwine contacted Respondent and requested a full refund.

5. Respondent did not provide a refund to Readwine.

### **CONCLUSIONS OF LAW**

By collecting an advanced fee to perform mortgage loan modification services on behalf of Readwine, after the effective date of Civil Code section 2944.7, Respondent willfully violated Business and Professions Code section 6106.3.

By failing to refund the \$2,995 advanced fees to Readwine, Respondent failed to promptly refund any part of a fee paid in advance that has not been earned in wilful violation of Rule of Professional Conduct 3-700(D)(2).

### **Case No. 11-O-14806**

### **FACTS**

1. In May 2010, Sheeba Gill hired Respondent for a loan modification and paid \$3,000.

2. Respondent provided a money back guarantee if his efforts to secure a loan modification proved unsuccessful.

3. Respondent filed a loan modification application for Gill, which proved unsuccessful.

4. Gill contacted Respondent and requested a full refund.

5. Respondent did not provide a refund to Gill.

### **CONCLUSIONS OF LAW**

By collecting an advanced fee to perform mortgage loan modification services on behalf of Gill, after the effective date of Civil Code section 2944.7, Respondent willfully violated Business and Professions Code section 6106.3.

By failing to refund the \$3,000 advanced fees to Gill, Respondent failed to promptly refund any part of a fee paid in advance that has not been earned in wilful violation of Rule of Professional Conduct 3-700(D)(2).

### **Case No. 11-O-14811**

### **FACTS**

1. On May 13, 2010, Lisa Wayans hired attorney Thomas Giordano to file a bankruptcy petition on her behalf to save her interest in several properties.

2. Giordano assigned Wayans' bankruptcy matter to Respondent, since Respondent agreed to act as co-counsel in Wayans' matter.

3. Respondent agreed to take over Wayans' bankruptcy matter when Giordano stopped working on her legal matter.

4. Respondent failed to complete the legal services he agreed to perform for Wayans.

### **CONCLUSIONS OF LAW**

By failing to perform the legal services related to Wayans' bankruptcy he agreed to perform, Respondent intentionally, recklessly or repeatedly failed to perform legal services with competence in wilful violation of Rule of Professional Conduct 3-110(A).

### **Case No. 11-O-15696**

### **FACTS**

1. On May 5, 2010, Brandon Hess hired Respondent for a loan modification and paid \$500 of a \$3,500 advanced fee.

2. Hess made no further payments to Respondent, and terminated his services.
3. Hess contacted Respondent and requested a full refund.
4. Respondent did not provide a refund to Hess.

### **CONCLUSIONS OF LAW**

By collecting an advanced fee to perform mortgage loan modification services on behalf of Hess, after the effective date of Civil Code section 2944.7, Respondent willfully violated Business and Professions Code section 6106.3.

By failing to refund the \$500 advanced fees to Hess, Respondent failed to promptly refund any part of a fee paid in advance that has not been earned in wilful violation of Rule of Professional Conduct 3-700(D)(2).

### **Case No. 11-O-16088**

### **FACTS**

1. On May 18, 2010, Joyce Cronin hired Respondent for a loan modification and paid \$3,500.
2. Respondent provided a money back guarantee if his efforts to secure a loan modification proved unsuccessful.
3. Respondent filed a loan modification application for Cronin, which proved unsuccessful.
4. Cronin contacted Respondent and requested a full refund.
5. Respondent did not provide a refund to Cronin.

### **CONCLUSIONS OF LAW**

By collecting an advanced fee to perform mortgage loan modification services on behalf of Cronin, after the effective date of Civil Code section 2944.7, Respondent willfully violated Business and Professions Code section 6106.3.

By failing to refund the \$3,500 advanced fees to Cronin, Respondent failed to promptly refund any part of a fee paid in advance that has not been earned in wilful violation of Rule of Professional Conduct 3-700(D)(2).

### **STANDARDS FOR ATTORNEY SANCTIONS**

To determine the appropriate level of discipline, the standards provide guidance. *Drociak v. State Bar* (1991) 52 Cal.3d 1085; *In the Matter of Sampson*, 3 Cal. State Bar Ct. Rptr. 119. A disciplinary recommendation must be consistent with the discipline in similar proceedings. See *Snyder v. State Bar* (1990) 49 Cal.3d 1302. Also, the recommended discipline must rest upon

a balanced consideration of relevant factors. *In the Matter of Sampson*, 3 Cal. State Bar Ct. Rptr. 119.

Pursuant to Standard 1.3 of the Standards for Attorney Sanctions for Professional Misconduct:

The primary purposes of disciplinary proceedings conducted by the State Bar of California and of sanctions imposed upon a finding or acknowledgment of a member's professional misconduct are the protection of the public, the courts and the legal profession; the maintenance of high professional standards by attorneys and the preservation of public confidence in the legal profession.

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Pursuant to Standard 1.5 of the Standards for Attorney Sanctions for Professional Misconduct:

Reasonable duties or conditions fairly related to the acts of professional misconduct and surrounding circumstances found or acknowledged by the member may be added to a recommendation or suspension or; pursuant to rule 9.19, California Rules of Court, to a reproof. Said duties may include, but are not limited to, any of the following:

1.5(b): a requirement that the member take and pass an examination in professional responsibility;

1.5(d): a requirement that the member undertake educational or rehabilitative work at his or her own expense regarding one or more fields of substantive law or law office management;

1.5(f): any other duty or condition consistent with the purposes of imposing a sanction for professional misconduct as set forth in standard 1.3.

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Pursuant to Standard 2.4(b) of the Standards for Attorney Sanctions for Professional Misconduct:

Culpability of a member of willfully failing to perform services in an individual matter or matters not demonstrating a pattern of misconduct or culpability of a member of willfully failing to communicate with a client shall result in reproof or suspension depending on the extent of the misconduct and the degree of harm to the client.

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Pursuant to Standard 2.6 of the Standards for Attorney Sanctions for Professional Misconduct:

Culpability of a member of a violation of any of the following provisions of the Business and Professions Code shall result in disbarment or suspension depending on the gravity of the offense or the harm, if any, to the victim, with due regard to the purposes of imposing discipline set forth in standard 1.3:

...

(b) Sections 6103 through 6105. ...

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While Respondent has recent prior discipline, the misconduct in these matters occurred during the same time period as the misconduct involved in Respondent's prior discipline, which resulted in a thirty day actual suspension. Accordingly, the prior discipline should not be given significant aggravating weight. *In the Matter of Freydl* (Review Dept. 2001) 4 Cal. Bar Ct. Rptr. 349.

The stipulated discipline of a five month actual suspension with a probation period long enough to ensure that Respondent is monitored and during which Respondent required to provide timely restitution, is sufficient to protect the interests of the public and the profession in these matters.

## **FURTHER AGREEMENTS OF THE PARTIES**

The factual statements contained in this Stipulation constitute admissions of fact and may not be withdrawn by either party, except with court approval.

## **RESTITUTION**

Respondent acknowledges that he owes restitution (including the principal amount, plus interest of 10 percent per annum) to his clients as detailed below. If the Client Security Fund ("CSF") has reimbursed the client for all or any portion of the principal amounts listed below, Respondent must also pay restitution to CSF in the amounts paid, plus applicable interest and costs. Respondent must pay the restitution owed pursuant to the disciplinary order resulting from this stipulation and provide satisfactory proof of payment to the Office of Probation not later than three (3) years from the effective date of the disciplinary order resulting from this stipulation.

<b>Payee</b>	<b>Principal Amount</b>	<b>Interest Accrues From</b>
Maureen Mutschler	\$3,500	December 21, 2009
Nicole Das	\$3,500	November 11, 2009
Luis Torres	\$1,200	January 8, 2010
Donald Hoover	\$3,500	May 18, 2010
Alice White	\$3,495	May 18, 2010
Iris Mohr	\$3,200	July 6, 2010
Jack Readwine	\$2,995	October 14, 2009
Sheeba Gill	\$3,000	May 31, 2010
Brandon Hess	\$500	May 5, 2010
Joyce Cronin	\$3,500	May 18, 2010

## **COSTS**


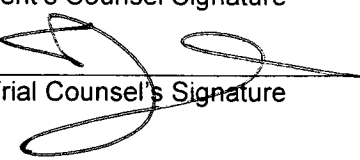
Respondent acknowledges that the Office of the Chief Trial Counsel has informed him that as of October 19, 2011, the estimated costs in this matter are \$16,177. Respondent further acknowledges that, should this Stipulation be rejected or should relief from the Stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

(Do not write above this line.)

In the Matter of: J. Randy Dorcy	Case number(s):
	10-O-07614
	10-O-09124
	10-O-11078
	11-O-10114
	11-O-10484
	11-O-10489
	11-O-10813
	11-O-11148
	11-O-11349
	11-O-11987
	11-O-12001
	11-O-12006
	11-O-14806
	11-O-14811
	11-O-15696
	11-O-16088

### SIGNATURE OF THE PARTIES

By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Facts, Conclusions of Law, and Disposition.

<u>10/19/2011</u> Date	 Respondent's Signature	<u>J. Randy Dorcy</u> Print Name
<u>                    </u> Date	<u>                    </u> Respondent's Counsel Signature	<u>n/a</u> Print Name
<u>10-19-11</u> Date	 Deputy Trial Counsel's Signature	<u>Erin McKeown Joyce</u> Print Name

(Do not write above this line.)

In the Matter of: J. Randy Dorcy	Case Number(s): 10-O-07614 10-O-09124 10-O-11078 11-O-10114 11-O-10484 11-O-10489 11-O-10813 11-O-11148 11-O-11349 11-O-11987 11-O-12001 11-O-12006 11-O-14806 11-O-14811 11-O-15696 11-O-16088
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### ACTUAL SUSPENSION ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public, IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without prejudice, and:

- ☒ The stipulated facts and disposition are APPROVED and the DISCIPLINE RECOMMENDED to the Supreme Court.
- ☐ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- ☐ All Hearing dates are vacated.

In accordance with the parties' stipulation, to the extent that the stipulated five-month suspension in the present proceeding actually overlaps with the stipulated 30-day suspension in *In re J. Randy Dorcy on Discipline*, case number S195742 (State Bar Court case numbers 09-O-13560 and 11-O-11702), the two suspensions will run concurrently.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies or further modifies the approved stipulation. (See rule 5.58(E) & (F), Rules of Procedure.) **The effective date of this disposition is the effective date of the Supreme Court order herein, normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

Date

10/27/11

Judge of the State Bar Court



**DONALD F. MILES**

## CERTIFICATE OF SERVICE

[Rules Proc. of State Bar; Rule 5.27(B); Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of Los Angeles, on October 27, 2011, I deposited a true copy of the following document(s):

### STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION

in a sealed envelope for collection and mailing on that date as follows:


- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at Los Angeles, California, addressed as follows:

**J. RANDY DORCY**  
**PO BOX 2349**  
**COSTA MESA, CA 92628**

- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

**ERIN M. JOYCE, Enforcement, Los Angeles**

I hereby certify that the foregoing is true and correct. Executed in Los Angeles, California, on October 27, 2011.

  
\_\_\_\_\_  
Tammy Cleaver  
Case Administrator  
State Bar Court